

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|   |                                |
|---|--------------------------------|
| In re Application of:                                 | Examiner:                      |
| Thierry Glauser                                       | HELM, CARALYNNE E.             |
| Serial No.: 10/807,362                                | Art Unit: 1615                 |
| Filed: March 22, 2004                                 | Confirmation No: 3954          |
| Customer No.: 45159                                   | Attorney Docket No.: 50623.351 |
| Title: <b>PHOSPHORYL CHOLINE COATING COMPOSITIONS</b> |                                |

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Mail Stop: **Amendment**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTICE OF NON-RESPONSIVE REPLY**

Dear Examiner Helm:

This communication responds to the Notice mailed on May 19, 2009.

The Examiner states that Applicants have not adequately replied to the provisional obviousness type double patenting rejection. Specifically, the Examiner states that Applicants' request to hold the rejection in abeyance is not a proper response.

Applicants respectfully traverse. The instant double patent rejection is **provisional** over a later filed co-pending application. According to MPEP §§804 and 822, the "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications.

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and

permit the earlier-filed application to issue as a patent without a terminal disclaimer. MPEP 804.B.1.

Accordingly, because the instant ODP rejection is provisional and not the only rejection remaining in this application, it is appropriate for Applicants to decline to address the ODP rejection on the merits or decline to file a terminal disclaimer until allowable subject matter is identified.

Applicants' response filed on February 5, 2009 is fully responsive. The Notice for non-responsiveness is improper. Applicants respectfully request the withdrawal of the Notice and timely examination of this application.

### **CONCLUSION**


Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

No fee is believed due. However, the Commissioner is hereby authorized to charge any fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. **07-1850**. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. **07-1850**.

Respectfully submitted,

Date 6/16/2009  
SQUIRE, SANDERS & DEMPSEY LLP  
One Maritime Plaza, Suite 300  
San Francisco, CA 94111  
Customer Number: 45159  
Telephone: (415) 954-0313  
Facsimile: (415) 393-9887

By   
Qun Liu  
Attorney for Applicants  
Registration No. 55,392